

some form of a threat against her. After moving a couple of large hampers full of mail which were between the two women, claimant approached Karen Logan. An argument broke out between claimant and Karen Logan, which led to a fight, which had to be broken up by their supervisors. Claimant and Karen Logan were removed to separate offices. Claimant was then sent home after being advised by her supervisor, Steve Wildeman, that she might be fired.

Later, at home, claimant was contacted by Mr. Wildeman and informed that she had been fired.

At no time during or after the fight did claimant advise respondent employer or any co-employee that she suffered any type of injury. However, claimant alleges, during the physical confrontation with Ms. Logan, that Ms. Logan grabbed her hair, dragged her across the strapping machine and threw her to the floor. Claimant testified that, while being dragged, she felt a snap in her low back. However, witnesses at the scene do not support claimant's testimony. No one saw claimant being dragged across a strapping machine, although both combatants did ultimately end up on the floor, pulling each other's hair. In addition, while several witnesses provided written statements and testified about the incident, no witness testified to seeing claimant complain of pain, limp or hold her back after the fight.

When claimant was notified that she had been fired, she failed to advise Mr. Wildeman of any injury suffered during the fight.

Claimant testified at preliminary hearing that she did not tell respondent about her back injury, but instead let her lawyer tell them. The first indication in the file of any contact by claimant's lawyer was on March 23, 2000, when the claim letter was initially presented to respondent.

Claimant was originally referred to Sergio Delgado, M.D., an orthopedic surgeon, for a prior shoulder injury. Dr. Delgado's medical reports from May 13, 1999, and September 7, 1999, are not a part of this record.

Claimant was referred to Dr. Delgado for an examination on April 5, 2000, as a result of this claim. Dr. Delgado was provided a history of the altercation, with claimant advising him she heard a popping noise in her low back during the fight. At the time of the examination, claimant had pain in her low back with radiculopathy into both hips and both legs, pain in her middle and upper back, pain in her right shoulder, pain in her neck and complaints of frequent headaches. Dr. Delgado's examination resulted in a clinical impression of myofascial complaints possibly related to the injury. This was the same diagnosis as from the earlier examinations. He recommended ongoing examinations, including an MRI of the lumbar spine, to determine any significant pathology, including the possibility of a disc herniation in the lumbar region.

Claimant had been referred on November 5, 1999, to Patrick L. Hughes, M.D., board certified in psychiatry, apparently regarding a prior accident which occurred on March 23, 1999. Dr. Hughes performed a psychiatric evaluation on claimant in order to provide his medical and psychiatric impression of her past and present psychiatric diagnoses and any causal relationship of those conditions to the earlier, right shoulder workplace injury of March 23, 1999. However, Dr. Hughes did not evaluate claimant's injury of March 7, 2000.

Dr. Hughes' medical record included extensive psychiatric records from claimant's teenage and adult years indicating claimant had undergone psychiatric treatment for many years as a result of both childhood and adult physical and mental abuse.

In proceedings under the Workers Compensation Act, it is claimant's burden to establish her right to an award of compensation by proving the various conditions upon which that right depends by a preponderance of the credible evidence. K.S.A. 1999 Supp. 44-501 and K.S.A. 1999 Supp. 44-508(g).

K.S.A. 1999 Supp. 44-501 states that the Workers Compensation Act is intended to be liberally construed to bring employers and employees within the provisions of the Act. The Act also provides that, once this is accomplished, the Act shall be applied impartially to both employers and employees in cases arising under the Act. K.S.A. 1999 Supp. 44-501(g).

In order for a claimant to collect workers compensation benefits, he or she must suffer an accidental injury that arises both out of and in the course of employment. The phrase "out of" employment points to the causal origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when it is apparent to the rational mind, upon consideration of all the circumstances, that there is a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment. Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973).

The Kansas Court of Appeals has determined that, when an injury results from an assault by a coworker, whether that injury arose out of the employment depends upon the nature of the incident and the motivations and actions of the aggressor. Fights resulting from personal animosity between employees are not compensable unless, in some way, foreseeable. Harris v. Bethany Medical Center, 21 Kan. App. 2d 804, 909 P.2d 657 (1995).

In this instance, the witnesses, including claimant, unanimously testified there was no indication of any possible physical threat between claimant and Karen Logan prior to March 7, 2000. While it was agreed that the coworkers did not like each other, there had

never been any forewarning of a possible physical confrontation. The Appeals Board finds this fight was not foreseeable.

Therefore, there must be some causal connection between the work or the conditions under which the work was required to be performed and the resulting injury. Brannum v. Spring Lakes Country Club, Inc., 203 Kan. 658, 455 P.2d 546 (1969).

When the animosity or dispute that culminates in an assault is imported into the employment from claimant's domestic or private life, and is not exacerbated by the employment, the assault does not arise out of the employment under any test. 1 Larson's Workers' Compensation Law, § 8.02[1][2] (2000).

It is generally accepted that, if the assault grew out of an argument over the performance of the work, the injury is compensable. 1 Larson's Workers' Compensation Law, § 8.01[2][b] (2000).

Here, however, while there was an initial dispute about claimant's banging of the trays, the actual physical conflict occurred as a result of claimant's perception that Karen Logan and her sister Tina were talking about claimant. Claimant testified that she heard Karen Logan refer to her in a derogatory fashion and possibly utter threats about what may or may not happen over the lunch hour. Karen Logan and her sister Tina, as well as several witnesses in the immediate vicinity, denied any such comments were made towards claimant. Ms. Logan, instead, testified that she and her sister simply talked for a few minutes about other incidents which had nothing to do with claimant. It was during this conversation that claimant approached Ms. Logan and the fight occurred.

The Administrative Law Judge denied claimant benefits, finding that the altercation arose as a result of claimant's perception that the coworkers were speaking ill of her behind her back. The evidence in the record supports this finding, and the Appeals Board agrees.

There was a dispute about whether claimant or Ms. Logan was the aggressor. However, an injury which is suffered during an assault arising out of and in the course of employment would be compensable without regard to whether claimant was the aggressor in the confrontation. Springston v. IML Freight, Inc., 10 Kan. App. 2d 501, 704 P.2d 394 (1985). The Appeals Board finds it irrelevant as to which of the parties was the aggressor.

In this instance, as the dispute and the resultant physical conflict occurred from claimant's misperception of the conversation between Ms. Logan and her sister, rather than any incidents related to the employment, the Appeals Board finds that this matter is not compensable. Additionally, claimant's actions after the fight do not support her claim

of a sudden back injury. Therefore, the denial of benefits by the Administrative Law Judge should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated June 8, 2000, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 2000.

BOARD MEMBER

c: Jeff K. Cooper, Topeka, KS
Heather Nye, Kansas City, MO
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director